



Department of  
**Human Resources**

# POLICY

<b>Approved by:</b> Rebecca R. Hunter, Commissioner	<b>Policy Number:</b> 12-014 (Rev. 5/15)
<b>Signature:</b> <i>Rebecca R. Hunter</i>	<b>Supersedes:</b> 12-014, 11-020, 12-065, 11-017, 99-029
<b>Application:</b> Executive Branch Agencies, Human Resource Officers	<b>Effective Date:</b> May 1, 2015
<b>Authority:</b> T.C.A. § 4-3-1703, T.C.A. § 8-30-104, T.C.A. § 8-30-316, T.C.A. § 8-50-807	<b>Rule:</b> Chapter 1120-01 and Chapter 1120-02

**Subject:**

## Terminations and Designations for Rehire

Pursuant to Tenn. Code Ann. § 8-30-316(a), an appointing authority must provide a preferred service employee with a ten (10) calendar day paid notice after notice of dismissal. The employee shall receive pay for any workdays that fall within that notice period.

### Designation of Rehire Eligibility

When an employee separates from the state service, through retirement, resignation, or dismissal, the appointing authority shall designate the employee's eligibility for rehire in Edison as follows: (1) eligible for rehire; (2) ineligible for rehire within the same agency or (3) ineligible for rehire within the state service. An employee who separates from the state service under favorable conditions shall be designated as eligible for rehire within the state service. If an agency fails to make a designation, the employee will automatically be designated as eligible for rehire.

To resign in good standing, an employee shall provide written notice at least ten (10) workdays prior to the effective date of separation, unless the appointing authority waives such period. Any employee who does not provide such notice may be designated as not eligible for rehire within that agency.

### Termination for Gross Misconduct

The Rules of the Department of Human Resources Chapter 1120-01 define gross misconduct as, "any job-related misconduct which may subject an employee to criminal prosecution." When recommending a separation for gross misconduct or when separating an employee on the grounds of gross misconduct, the agency must be certain the conduct is consistent with the definition. An employee's misconduct outside of work hours and off state property is not necessarily gross misconduct if the conduct is not carried out in the course of employment. Therefore, it is important to discuss each potential gross misconduct situation with the appropriate agency legal counsel in order to make a decision.

When terminating an employee for gross misconduct, the agency must clearly describe in the letter of separation the employee's job-related misconduct and provide the relevant provision(s) under the

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Tennessee Code which may subject the employee to criminal prosecution. The agency may also wish to cite any other applicable statutes, rules, and/or policies of the agency or the Department.

#### Forfeiture of Annual Leave

In the case of dismissal for gross misconduct, the agency shall use the employee's annual leave balance for the required ten (10) day paid notice, if available. The employee forfeits any remaining annual leave balance to the State of Tennessee pursuant to Tenn. Code Ann. § 8-50-807. However, if the employee does not have a sufficient annual leave balance to cover the paid notice, the agency must pay the employee for any workdays that fall within the ten (10) calendar day notice period. The agency cannot use sick leave or compensatory time for this paid notice. Additionally, any employee who resigns from state service to avoid dismissal for gross misconduct, or who was guilty of gross misconduct prior to leaving state service, is not entitled to collect any accrued annual leave.

#### Ineligible for Rehire Statewide

An agency may only designate an employee as ineligible for rehire statewide when a dismissal or termination from state service is for gross misconduct, an employee resigns or retires from state service to avoid dismissal for gross misconduct, or an employee committed gross misconduct during employment. Employees designated as ineligible for rehire statewide shall be removed from all eligible lists. At no time are agencies required to interview applicants on eligible lists who previously received an ineligible for rehire statewide designation.

The appointing authority shall provide written notice to all employees designated as ineligible for rehire within the state service. The written notice, which may be contained in a dismissal letter or in a separate letter if the employee retires or resigns, shall detail the effect of the rehire designation on the employee's potential for future employment in the state service. The written notice shall be placed in the employee's personnel file.

Agencies shall include the following language in the written notice to an employee designated as ineligible for rehire statewide:

"Due to the seriousness of this situation, you will not be eligible for rehire with the State of Tennessee. If you reapply for positions within state government, state agencies will not be required to interview you when filling a position."

#### Ineligible for Rehire within the Agency

An agency may designate an employee as ineligible for rehire within the agency if the employee separates under less than favorable conditions. Employees who receive this recommendation shall be designated on an eligible list as ineligible for rehire within the agency. Agencies seeking to hire an individual who has been coded as ineligible for rehire within the agency, must contact the employee's former agency for a reference check and reason for the separation. If satisfied with the recommendation from the employee's previous agency, the hiring agency may interview and consider eligible applicants in accordance with applicable law and policies.

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Questions regarding the definition of gross misconduct or terminations for gross misconduct may be directed to the Employee Relations Division. Questions regarding processing transactions related to terminations may be directed to the Technical Services Division.